IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19538 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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ABDUL KADAR GULAM MOHAMMAD SHAIKH & 5 - Petitioner(s)
Versus
MOHAMMAD IDRISHJAMAL C & 3 - Respondent(s)

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Appearance :
MR CB DASTOOR for Petitioner(s) : 1 - 6,6.2.1
MR MEHUL H RATHOD for Respondent(s) : 1 - 3.
MR HS MUNSHAW for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 17/07/2006

ORAL JUDGMENT

1. **RULE**. Mr. Mehul H. Rathod, learned advocate appears and waives service of notice of Rule on behalf of Respondent Nos. 1 to 3 whereas Mr. H.S.Munshaw, learned advocate appears and waives service of notice of Rule on behalf of Respondent No.4.
2. By filing instant petition under Article 227 of the Constitution of India, petitioner seeks to challenge the order dated 31.8.2005 rendered in Civil Misc. Appeal No. 7 of 2004 by the learned Presiding Officer, 3rd Fast Track Court, District Banaskantha at Palanpur, by which the Appeal filed by the Respondents / original Defendants

came to be allowed and thereby order dated 17.12.2003 recorded below application exh.5 in Regular Civil Suit No. 186 of 2003 by the learned Civil Judge (SD), Palanpur, allowing the application filed by the present petitioners restraining the respondents / original defendants not to demolish the suit premises, till final disposal of the Suit, has been quashed and set aside and thereby application exh.5 has been dismissed.

3. This Court vide order dated 27.9.2005, while issuing notice for final disposal granted the ad interim relief to effect that the impugned order passed by the learned Presiding Judge, Fast Track Court No.3, Banaskantha at Palanpur dated 31.8.2005, while allowing the Civil Misc. Application No. 7 of 2004, has rejected the application exh.5 preferred in Regular Civil Suit No. 186 of 2003 shall remain under suspension and the construction in question shall not be demolished, till the returnable date.

4. Having heard Mr. C.B.Dastoor, learned advocate of the petitioners, Mr. Mehul H. Rathod, learned advocate for Respondent Nos. 1 to 3 and Mr. H.S.Munshaw, learned advocate for Respondent No.4, and on the facts and in the circumstances emerging from the record of the case, if the impugned order is allowed to operate, it would cause prejudice to the original plaintiffs because the application exh.5, which has been

granted by the learned trial Judge, has been ordered to be dismissed and in that case Regular Civil Suit No. 186 of 2003 filed by the original Plaintiff will become infructuous, therefore, it is in the interest of all the parties that the order passed below application exh.5 in Regular Civil Suit No. 186 of 2003 should be allowed to continue till the disposal of the Suit, which would meet the ends of justice.

5. Seen in the above context, this petition deserves to be allowed by granting the prayer made below application exh.5 in Regular Civil Suit No. 186 of 2003, during the pedency of the Suit.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 31.8.2005 recorded in Civil Misc. Appeal No. 7 of 2004 by the learned Presiding Officer, 3rd Fast Track Court, District Banaskantha, at Palanpur is hereby quashed and set aside, the result of which would be that the order dated 17.12.2003 recorded below application exh.5 in Regular Civil Suit No. 186 of 2003 by the learned Civil Judge (SD), Palanpur, granting ad interim injunction during the pendency of the Suit, directing the defendant not to demolish the suit premises till the final disposal of the Suit, shall remain operative till disposal of the Suit. Rule is made absolute accordingly.

7. On the facts and in the circumstances emerging from the record of the case, the learned trial

Judge shall expedite the hearing of the Suit on or before 30.4.2007 without fail. It is expected of both the parties to cooperate with the learned trial Judge for expeditious hearing of the Suit.

8. Needless to mention that the order which is impugned is passed at interlocutory stage which has no bearing on the final disposal of the Suit. The learned trial Judge shall decide the Suit strictly on the basis of the evidence adduced before him, uninfluenced by the fact that the application exh.5 is decided in favour of the Plaintiff and the said order has been affirmed by this Court, strictly in accordance with law.

Direct service permitted.

(A.M.Kapadia,J)

Jayanti*